

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE PROCTER & GAMBLE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 08-066-JJF
)	
TEVA PHARMACEUTICALS USA, INC.,)	
)	
Defendant.)	

REVISED JOINT MOTION FOR ENTRY OF JUDGMENT AND STIPULATION

Plaintiff The Procter & Gamble Company (“Procter & Gamble”) and Defendant Teva Pharmaceuticals USA, Inc. (“Teva USA”) move for entry of judgment in this case based on the opinion dated February 28, 2008, in *The Procter & Gamble Co. v. Teva Pharmaceuticals USA, Inc.* (No. 1:04-cv-940-JJF) (the “Prior Action”), a related case pending before this Court involving the same patent and similar legal and factual claims.

In support of this motion, Procter & Gamble and Teva USA state as follows:

1. The present case is a patent infringement action involving Procter & Gamble’s U.S. Patent No. 5,583,122 (the “’122 Patent”). It relates to Teva USA’s Abbreviated New Drug Application No. 71-215, submitted to the FDA under Section 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)), seeking approval to engage in the commercial manufacture, use, and sale of tablets containing 75 mg of risedronate sodium, a generic version of the 75 mg form of Procter & Gamble’s ACTONEL® tablets, before the expiration date of the ‘122 Patent.

2. This action is related to the Prior Action, which also involves the ‘122 Patent. Like this action, the Prior Action arises under 35 U.S.C. §§ 271 and 281. The Prior Action relates to ANDA No. 77-132, which was filed by Teva USA with the FDA for approval to

market a generic version of Procter & Gamble's ACTONEL® product in 5 mg, 30 mg, and 35 mg forms.

3. On November 6-8, 2006, this Court held a trial on the merits in the Prior Action.

4. Before trial in the Prior Action, Teva USA stipulated for purposes of that litigation that its commercial marketing of its products at issue in the Prior Action would infringe claims 4, 16, and 23 of the '122 Patent if those claims were valid. As a result, the sole issue litigated during that trial was the validity of those claims.

5. Teva USA agrees, for purposes of this action, that its commercial marketing of its proposed generic version of the 75 mg ACTONEL® tablets would also infringe claims 4, 16, and 23 of the '122 Patent if those claims are valid. As a result, the only issue to be litigated in this action is the validity of those claims.

6. Procter & Gamble and Teva USA agree that, subject to any appeal, the Court's determination in the Prior Action with respect to the validity of claims 4, 16, and 23 of the '122 Patent is dispositive of the validity of those claims in this case as well.

7. On March 13, 2008, Procter & Gamble filed a Request for Entry of Proposed Order of Final Judgment. On March 20, 2008, Teva USA filed a Response, and on March 27, 2008, Procter & Gamble filed a Reply.

8. The parties have now agreed on a form of judgment, which is attached as Exhibit A hereto.

9. The parties agree that when the Court enters judgment in the Prior Action, it may immediately enter a judgment in this case in the form attached as Exhibit A.

10. Procter & Gamble hereby withdraws its Request for Entry of Proposed Order of Final Judgment in this action dated March 13, 2008, and Teva USA hereby withdraws its Response dated March 20, 2008.

For these reasons, Procter & Gamble and Teva USA respectfully request that the Court enter judgment in this action in accordance with the foregoing.

/s/ Steven J. Fineman

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Dated: May 22, 2008

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EXHIBIT A

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 Plaintiff,)
 v.) C.A. No. 08-066-JJF
)
 TEVA PHARMACEUTICALS USA, INC.,)
)
 Defendant.)
)

[PROPOSED] ORDER OF FINAL JUDGMENT

This action having been stayed pending a decision in the related action, Civil Action No. 04-CV-940 (JJF), which came to trial in November 2006 before this Court, Honorable Joseph J. Farnan, Jr., District Judge, presiding, and pursuant to the Joint Motion to Stay All Proceedings submitted by the parties on February 26, 2008, and entered by the Court on March 5, 2008;

NOW THEREFORE, IT IS ORDERED AND ADJUDGED for the reasons set forth in this Court’s Opinion dated February 28, 2008, in Civil Action No. 04-CV-940 (JJF), that Final Judgment is entered in favor of the Plaintiff, The Procter & Gamble Company (“Procter & Gamble”), and against the Defendant, Teva Pharmaceuticals USA, Inc. (“Teva USA”), on Procter & Gamble’s claims that Teva USA has infringed Claims 4, 16 and 23 of U.S. Patent 5,583,122 (“the ’122 patent”);

AND IT IS FURTHER ORDERED AND ADJUDGED that Claims 4, 16, and 23 of the '122 patent are valid and enforceable;

AND IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date for any approval of Teva USA's Abbreviated New Drug Application No. 79-215

shall be modified to a date which is not earlier than the date of expiration of the '122 patent, including any extension of the term of that patent;

AND IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(B), Teva USA, its successors-in-interest, officers, agents, servants, attorneys and employees, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from commercially making, using, offering to sell, or selling within the United States or importing into the United States any products that infringe the '122 patent, including the 75 mg risedronate sodium tablets for treatment or prevention of osteoporosis that are the subject of Abbreviated New Drug Application No. 79-215, until the expiration of the '122 patent (December 13, 2013), including any extension of the term of that patent.

DATED this _____ day of May, 2008.

United States District Judge